

ARTHUR PALMER
Claimant

CARLSON SYSTEMS
Respondent

**CIGNA and
TRAVELERS INSURANCE COMPANY**
Insurance Carriers

Docket No. 172,333

ORDER

Travelers Insurance Company requests review of the June 1, 1995 Order by Administrative Law Judge John D. Clark denying Travelers Insurance Company's motion for a rehearing.

ISSUES

On appeal, Travelers Insurance Company contends the Administrative Law Judge exceeded his jurisdiction by denying its motion for rehearing. The specific issues upon which review is requested are:

- (1) Whether the Administrative Law Judge has jurisdiction to enter an award against Travelers when Travelers had not received notice of the hearing;
- (2) Whether the evidence establishes a new accidental injury in the course of employment;
- (3) Whether notice was given; and
- (4) Whether claim was timely filed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds that it is without jurisdiction to review the June 1, 1995 Order of Administrative Law Judge John D. Clark and that this appeal should therefore be dismissed.

K.S.A. 44-551, as amended by S.B. 59 (1995) confers upon the Appeals Board authority to review "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" However, it also requires that when an appeal is brought from a preliminary award under K.S.A. 44-534a, review by the Board be limited to appeals where " . . . it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing." K.S.A. 44-551(b)(2)(A), as amended.

K.S.A. 44-534a(a)(2) provides in part that:

"A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board."

Respondent attempts to raise in this appeal issues of whether there was proof of accident in the course of employment, whether timely notice of accident was given and whether timely written claim was filed. However, those issues were not addressed in the June 1, 1995 Order of the Administrative Law Judge from which this appeal was taken. Those issues were resolved when this claim was found to be compensable in the May 9, 1995 Order by Administrative Law Judge John D. Clark. No appeal was taken from that Order. Therefore, those issues will not be considered by the Appeals Board in this appeal from the June 1, 1995 Order.

The remaining issue then is whether the Administrative Law Judge exceeded his jurisdiction in entering his Order of June 1, 1995 denying Travelers Insurance Company's motion for a rehearing. A determination of that issue requires a review of the chronology of certain events leading up to the appearance by Travelers Insurance Company in this case.

Travelers Insurance Company (hereinafter "Travelers") entered its appearance in this case subsequent to an Order being entered by Administrative Law Judge John D. Clark dated May 9, 1995. In that Order, Judge Clark awarded temporary total disability compensation, ordered all medical to be paid and authorized Dr. Perlita Odulio as claimant's treating physician. That Order followed a preliminary hearing of April 17, 1995. The Order reflects Carlson Systems as the respondent and CIGNA as the insurance carrier. Respondent and CIGNA were represented by Mr. Kirby A. Vernon of Wallace, Saunders, Austin, Brown & Enochs. Nowhere on the Order does Travelers appear. Travelers was not present at the preliminary hearing through counsel or otherwise. Although no motion is found in the court's file, the record reflects that Travelers requested a rehearing through its attorney, William L. Townsley III of Fleeson, Gooing, Coulson & Kitch. A hearing on that request for a rehearing was held before Judge Clark on June 1, 1995 and said request was denied by Order of that same date. It is from that Order of June 1, 1995 denying Travelers' request for rehearing that this appeal was taken.

Mr. Townsley represented himself to be counsel for both respondent and the insurance carrier, Travelers. However at all pertinent times herein respondent was represented by Kirby A. Vernon who is also counsel for CIGNA. Travelers sought a rehearing before Judge Clark on his Preliminary Hearing Order of May 9, 1995 arguing that it should not be responsible for the preliminary hearing benefits ordered paid therein because it was neither given notice of nor was it represented at said hearing. However, the Appeals Board does not find any reference to Travelers in Judge Clark's May 9, 1995 Order.

The record reflects that respondent changed carriers for its workers compensation insurance on June 30, 1992, at which time CIGNA's coverage ended and Travelers' began. Claimant alleges an accident occurring on December 28, 1991. Despite the fact that Judge Clark entered an Order on March 21, 1995 finding that CIGNA does not have the coverage for the time period that is the subject of the preliminary hearing because all of the

claimant's complaints are after June 30, 1992, the court did not find a new date of accident nor did claimant amend its claim to allege an accident date after June 30, 1992. The preliminary hearing of April 27, 1995 was conducted pursuant to a claim for compensation and an Application for Preliminary Hearing alleging a December 28, 1991 accident. Notice was given to respondent and CIGNA who appeared at the preliminary hearing represented by Mr. Vernon. Notice was not given to Travelers, nor was Travelers represented at the April 27, 1995 preliminary hearing. (There was also a finding made at the April 27, 1995 hearing that notice had been given to Sedgwick James of Nebraska, Inc., but the file also contains a letter dated April 28, 1995 from the vice president of Sedgwick James confirming a telephone conversation with the Administrative Law Judge the previous day to the effect that Travelers and not Sedgwick James followed CIGNA as the insurance carrier for respondent.)

The May 9, 1995 Order of Judge Clark issued following the April 27, 1995 preliminary hearing reflects respondent to be insured by CIGNA and its counsel to be Kirby Vernon, who is likewise counsel for CIGNA. As previously stated, Travelers is nowhere reflected on the May 9, 1995 Order, nor is it mentioned in the record of the April 27, 1995 preliminary hearing. Accordingly, there is no order from which Travelers has standing to seek a rehearing. It therefore follows that Travelers' due process rights were not affected and Travelers does not have standing to seek review of the denial of its motion for a rehearing. The Request for Review filed by respondent (sic) and Travelers Insurance Company should therefore be dismissed.

To the extent that Mr. Townsley also represents the interests of respondent (interests which appear to be at cross purposes with those being espoused by Mr. Vernon on behalf of respondent and CIGNA) this appeal is out of time and should therefore likewise be dismissed. Respondent was present through its counsel, Mr. Vernon, at the April 27, 1995 hearing and any appeal from the Administrative Law Judge's Order of May 9, 1995 should have been brought within ten (10) days of that Order. See K.S.A. 44-551, as amended. The June 1, 1995 Order denying respondent's motion for a rehearing did not alter or amend the May 9, 1995 Order and was not a hearing on the merits of claimant's claim for compensation. No new evidence or testimony was received. Accordingly, the filing of respondent's motion for reconsideration did not extend the time for appeal from the May 9, 1995 Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the June 1, 1995 Order of Administrative Law Judge John D. Clark remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Paul D. Hogan, Wichita, KS
Kirby A. Vernon, Wichita, KS
William L. Townsley III, Wichita, KS
Steven L. Foulston, Wichita, KS
John D. Clark, Administrative Law Judge

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Philip S. Harness, Director